

Businesses Act 71 of 1991 (BA)

Topic: Business

IN A CALABASH

Introduction

The Businesses Act 71 of 1991 (BA) regulates certain activities which may be offered or provided by a business.

In terms of the Act, these activities can only be offered and provided once a license is obtained.

If one operates a business which–

- makes or sells perishable foods;
- provides health services, including a gym, health club or spa where sauna, massage and related spa treatments are offered;
- plays music to employees, the public or guests;
- provides entertainment-related activities, such as snooker, billiards or slot machines, is a night club or disco or shows movies;
- trades or hawks foodstuffs and related products in a municipal area; or
- sells alcohol,

then one must apply for the required license in the prescribed manner and form.

Before such license is granted, certain conditions or pre-requisites must be met.

Objectives of the Act

The BA provides that no person may carry on certain service-related businesses unless it holds a license issued to it by the council, local authority or municipality where the business premises are situated and from which the business activity is operated.

Application of the Act and its implication to Tourism

The Act applies to any business that offers–

- turkish baths, saunas or other health baths;
- providing massage or infra-red treatment;
- escort services, whether male or female;

- three or more mechanical, electronic or electrical contrivances, instruments, apparatus or devices designed or used for the purpose of the playing of any game or for the purpose of recreation or amusement, and the operation of which involves the payment of any valuable consideration, either by the insertion of a coin, token coin or disc therein or in an appliance attached thereto or in any other manner;
- three or more snooker or billiard tables;
- a night club or discothèque;
- a cinema or theatre;
- adult premises referred to in the Films and Publications Act 65 of 1996; or
- the sale of any meals or perishable foodstuffs which is conveyed from place to place, whether by vehicle or otherwise, on a public road or at any other place accessible to the public or in, on or from a movable structure or stationary vehicle.

Summary of the provisions of the Act

Though the Act states that certain activities have to be done under license, it does not prescribe or set out the actual license application procedure which a business must follow.

These procedures are set out under the local municipal by-laws applicable in the areas where the business is located and where the activities requiring a license are to take place.

All business operators should therefore make contact with the local municipality where a license detailed above is required to ascertain what by-law and procedure must be consulted and followed.



WHAT HAPPENS IF YOU DO NOT COMPLY?

It is a criminal offence to operate certain businesses without a business license.

The Act sets out a number of offences concerning business licenses, including fines and imprisonment.

DESCRIPTION OF OFFENCE	FINE
Trading without a license	R500
Trading or hawking in meals without a license	R500
Trading contrary to terms and conditions	R1 000
Failure to produce a license on request by an authorised officer	R500
Refusal or failure, without just cause, to answer any question which an inspector has put to exercise his or her powers.	R500
Making a statement to an inspector which is false or misleading, knowing it to be false or misleading	R1 500
Hindering or obstructing an inspector in the exercise, carrying out or performing of his or her powers, duties or functions.	R1 000

In addition to fines and imprisonment, when a license is taken away or where a business is found to be operating without the required license, that business will be ordered by the local authorities and/or police to stop offering the infringing and unlicensed product or service. The police may even close the entire business down.

This will result in loss of business, income and the ultimate closure of the business.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

- Awareness of the Act and requirements for license;
- Awareness of applicable by-laws and license procedure; Obtain a license or permit to trade;
- Payment of annual license fee;
- Monitoring and compliance with license conditions; and
- Annual renewal of license and payment of annual fee where applicable.

FURTHER INFORMATION

Regulators

The applicable provincial government and local authority having jurisdiction
Local municipality

PRESCRIBED FORMS

Contact municipality for details or download off website